No. S026455

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK

IN RE DAVID L. MURTISHAW
ON
HABEAS CORPUS

The petition for writ of habeas corpus is denied. The claims that failure to instruct on unreasonable self-defense and to define first degree murder precluded full consideration of mitigating penalty evidence (Grounds 3, 4, 5); that petitioner was prejudiced by erroneous instructions under the 1978 death penalty initiative (Ground 6); that the penalty jury received an erroneous unanimity instruction (Ground 7); and that unreasonable self-defense rules announced in People v. Flannel (1979) 25 Cal.3d 688 should apply retroactively to his guilt trial (Ground 9) are not cognizable on habeas corpus because they were previously raised and rejected on appeal. (In re Waltreus (1965) 62 Cal.2d 218, 225.) The

claims involving execution by lethal gas (Ground 1); article I, section 27 of the California Constitution (Ground 2); and failure to investigate mental defenses (Ground 8) are denied on the merits. Grounds 1, 2 and 8 are also denied for the independent reason that they are untimely. (See In re Stankewitz (1985) 40 Cal.3d 391, 396-397, fn. 1; Supreme Court Policies Regarding Cases Arising from Judgments of Death, eff. June 6, 1989, mod. eff. Sept. 28, 1989, standards 1-1 et seq.) The application for stay of execution is denied.

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Acting Chief Justice